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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,180	04/05/2007	Volker Gandert	10191/4029	9258
26646	7590	10/02/2009	EXAMINER	
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				KAMEN, NOAH P
3741		ART UNIT		PAPER NUMBER
10/02/2009		MAIL DATE		DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/565,180	GANDERT, VOLKER
	Examiner	Art Unit
	Noah Kamen	3741

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 5/18/09.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 8,9,11-13,15-17 and 19-21 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 8,9,11-13,15-17 and 19-21 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>6/30/09</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

Claims 8, 9, 11-13, 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salecker (GB2317660).

Claims 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salecker et al (GB 2 317 660 A). Salecker et al discloses an engine start control and as described on Page 21, Lines 10-27, the control checks in block 102 to determine whether the gear box is in neutral or engaged. If the gear box is not in neutral, then in block 104, "the clutch is opened automatically and at least one vehicle brake, such as parking brake or operating brake is operated automatically." Afterwards in block 105, a starter release is provided and the engine is started in block 106. See also Figure 2. However, Salecker et al does not disclose "making a check as to whether the vehicle is stationary".

Specifically regarding Claim 8 and the limitation of "making a check as to whether the vehicle is stationary", a driver or operator would inherently check to see if the vehicle is stationary. If the vehicle were to be in motion (i.e. the vehicle is already in operation, or if the vehicle begins rolling down the hill after being parked) the driver would not be concerned with trying to start the engine. Note that given the broadest reasonable interpretation, the method as claimed does not preclude a driver/operator from performing at least a portion of the recited steps.

Specifically regarding Claim 9, as best interpreted, the brakes activated by the steps of Salecker et al would be released at least by the point when the vehicle is actually driven.

Specifically regarding Claim 10, the steps of Salecker et al proceeds from block 102 to 106 if the gear box is not in neutral. At block 105 starter release is provided and at block 106 the engine is started. Since the blocks are followed from one to the next without other inputs and the engine is started at block 106 after the starter release is provided at block 106, this process can be considered as "automatically starting the engine".

Specifically regarding Claim 11, Salecker et al discloses on Page 9, Lines 28-35 that a starter release is provided if the neutral position is engaged within a predefined time length of 0.1 to 10 seconds. If a starter release is not provided, the engine is not automatically started.

Specifically regarding Claim 12, block 102 performs the task of determining whether the gear box is in neutral.

Specifically regarding Claim 13, block 104 opens the clutch and block 105 provides a starter release after the clutch has been opened.

Additionally regarding Claims 8-13, note that the method of Claim 8 could also be met if a driver of a manual transmission automobile performs a "push start" - that is an engine with a manual transmission can be started without the aid of a starter by pushing a vehicle or having the vehicle being started by rolling down an incline. In performing a "push start" the driver would cause the vehicle to become in motion and in doing so would be checking to see if the vehicle is stationary (or not stationary as the case may be). Since the vehicle would have to be in motion to perform the "push start", the vehicle would not be stationary and the remainder of the method would not have to be carried out. Note that Claims 9-13 require the starting authorization of Claim 8 which

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occurs only "if the vehicle is stationary" and therefore would not need to be carried out.

Further note that it is well known in the art for drivers of manual transmission vehicles to depress both the clutch and the brake pedals prior to turning the ignition key switch. The act of turning the ignition can be considered as "authorizing a starting of the engine". Since a driver would subconsciously check to see whether their vehicle is stationary or not as they approach (as it would be quite apparent if it were rolling away) prior to getting in and starting their vehicle, the method as claimed in Claim 8 given its broadest reasonable interpretation would be met by following general starting operating procedures of a manual transmission vehicle.

Specifically regarding Claim 14, referring to the "push start" described directly above, the driver would personally authorize the starting of the engine by turning the ignition switch once the vehicle is in gear and in motion in order to start the vehicle without the aid an engine starter (i.e. dead battery).

Balz et al

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balz et al (WO 99/50112). Balz et al discloses an electric control unit that applies the parking brake system before starting the vehicle. However, Balz et al does not distinctly disclose "making a check as to whether the vehicle is stationary".

Specifically regarding Claim 8, a driver would subconsciously check to see whether their vehicle is stationary or not as they approach (as it would be quite apparent if it were rolling away) prior to getting in and starting their vehicle, the method as claimed in Claim 8 given its broadest reasonable interpretation would be met once the

driver performs the check and then starts a vehicle with the electric parking brake system as disclosed by Balz et al.

Specifically regarding Claim 9, as best interpreted, Balz et al discloses releasing the parking brake system during the starting operation of the vehicle by means of suitable dynamics.

Response to Arguments

Applicant's arguments filed 6/3/09 have been fully considered but they are not persuasive. The applicant argues that the prior art fails to suggest the feature of a control unit checking whether the vehicle is stationary and if there is a starting command. The examiner contends that the issue of a "control unit" is not germane to the claims. All the method steps can be performed by the human operator. However, rewriting the claims as **apparatus** claims including a control unit would be **allowable**. The arguments presented in the previous rejections dated 9/3/08 and 3/3/09 are reiterated.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noah Kamen whose telephone number is 571 272 4845. The examiner can normally be reached on M-Th 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Cuff can be reached on 571 272 6778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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